

**REMARKS**

**I. Status of the Claims**

No amendments are made herein. Accordingly, there can be no new matter or written description issues raised.

With entry of this paper, Claims 1-71 are pending, of which claims 60-71 are withdrawn as directed to non-elected subject matter.

**II. Interview Summary**

Applicants thank Examiner Venkat for the courtesy extended in the interview with Applicants' representatives on February 17, 2010.

M.P.E.P. 713.04 provides eight items (A-H) that should be addressed in Applicants' submission of the substance of the interview. Applicants' submissions regarding each of those items are as follow:

(A) No exhibit was shown and no demonstration was conducted at the interview.

(B) All of the claims were generally discussed.

(C) The interview included a discussion of the §103 rejections over the combination of PGPUB US 2004/0074015 (the '015 application), which is the English equivalent of WO 02/051,369, and U.S. Patent No. 4,927,627 (the '627 patent).

(D) No claim amendments were proposed.

(E) Applicant's representatives discussed with Examiner Venkat the non-obviousness of the currently pending claims over the combination of the '015 application and the '627 patent.

(F) Applicant's representatives and Examiner Venkat also discussed at the interview the possibility of submitting data showing that emulsions of the instant application result in, for example, better color than hydrogels of the '015 application using the same amphiphilic polymer.

(G) No agreement was reached between Applicant's representatives and Examiner Venkat before the Examiner issued the Advisory Action.

(H) This interview was in person with Deborah M. Herzfeld and Troy Peterson, so this item does not apply.

Examiner Venkat provided Applicants' representatives with an Examiner's Interview Summary on March 8, 2010.

### **III. Rejection under 35 U.S.C. § 103(a)**

In the Advisory Action, the Office maintains the rejections of claims 1-59 under 35 U.S.C. § 103(a) as being allegedly "unpatentable over" the combination of WO 02/051,369 (WO '369)<sup>1</sup> and U.S. Patent No. 4,927,627 (the '627 patent) for the reasons set forth in the Advisory Action at pages 2-5. Specifically, the Office contends that "one of ordinary skill in the hair care art would prepare the compositions of WO document using oxidizing agent, surfactant, stabilizer, amphiphilic polymer of formula I and hydrophobic unit and combine it with fatty alcohol taught by patent '627 and use it in the form of oil-in-water emulsions taught by patent '627. . . ." See Advisory Action at page 5.

Applicant respectfully traverses for the following reasons:

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<sup>1</sup> The Examiner's states that "[t]he examiner is relying on English equivalent of WO document, which is PGPUB US 2004/0074015 ('015)." For convenience, Applicant's references to WO '369 will therefore also be to PGPUB US 2004/0074015 (the '015 application).

The attached Declaration under 37 C.F.R. § 1.132 ("Declaration") provides that whether or not a composition comprising the amphiphilic polymer can be prepared in the form of oil-in-water emulsion possessing desirable properties is unpredictable. The '015 application describes a gelled cosmetic composition for treating keratinous materials comprising in a carrier suitable for keratinous materials: (a) at least an amphiphilic polymer comprising at least an ethylenically unsaturated monomer with sulphonic group, in free form or partly or completely neutralised and further at least a hydrophobic part; (b) at least an oxidising agent. See Abstract and paragraph [0001]. As indicated in the attached Declaration, composition B, which would otherwise fall within the scope of the disclosure of the '015 application except that it was prepared in the form of oil-in-water emulsion in accordance with the claims, is undesirable as a cosmetic composition for keratin fibers because it did not stay on the hair.

Moreover, the '627 patent describes a composition in the form of an oil-in-water emulsion containing oil or fatty components, emulsifiers and hydrogen peroxide and, in addition, a thickening agent comprising a carboxyl-group containing polymer or copolymer. See Abstract. In the Declaration, Composition C, which would otherwise fall within the disclosure of the '627 patent except that the thickening agent was replaced by the amphiphilic polymer, is undesirable because it dephased after being stored at 23 °C for three days.

Both Compositions B and C employed the amphiphilic polymer and were prepared in the form of oil-in-water emulsion. However, as indicated by the Declaration, they are not suitable for cosmetic composition as they either did not have the appropriate viscosity, or dephased after a short period of time. Those results, if not

teaching away from using the amphiphilic polymer in an oil-in-water emulsion, at least display that the art with respect to the oil-in-water emulsion is unpredictable when the amphiphilic polymer is included in the composition.

Applicants respectfully point out that “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art.” MPEP 2143.01(III) (emphasis in original) (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (S. Ct. 2007)). As such, the combined teachings of the ‘015 application and the ‘627 patent as alleged by the Office would not have suggested a reasonable level of success and thus would not have led a skilled artisan to combine the teachings in a way as alleged by the Office.

In view of the above arguments, Applicant submits that the Office has not established a prima facie case of obviousness. Thus, the rejection of claims 1-59 under 35 U.S.C. § 103(a) as being unpatentable over the combination of the ‘015 application and the ‘627 patent, is in error and should be withdrawn.

## **V. Conclusion**


In view of the foregoing remarks, Applicant respectfully requests reconsideration of this application and timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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By: \_\_\_\_\_  
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